

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	
Table of Allotments,	)	MB Docket No. 02-124
FM Broadcast Stations.	)	RM-10446
(Amboy, Baker, and Desert Center, California;	)	
Kingman, Mohave Valley, Parker, and Seligman,	)	
Arizona; and Boulder City, Caliente, Henderson,	)	
and Pahrump, Nevada)	)	
	)	

**REPORT AND ORDER  
(Proceeding Terminated)**

**Adopted: June 30, 2004**

**Released: July 8, 2004**

By the Assistant Chief, Audio Division:

1. At the request of KHWY, Inc. (“KHWY”), the Audio Division has before it the *Notice of Proposed Rule Making* (“Notice”) in this proceeding,<sup>1</sup> proposing the allotment of Channel 237A at Amboy, California, as that community’s first local aural transmission service. KHWY and REC Networks (“REC”) filed comments. Cameron Broadcasting, Inc. (“Cameron”) filed a counterproposal. Reply comments were filed by KHWY, REC, and Marathon Media Group, LLC (“Marathon”). Further pleadings were filed by Infinity Radio Operations, Inc. (“Infinity”), licensee of FM Station KMXB, Henderson, Nevada, and KJUL License, LLC (“KJUL”), licensee of FM Station KSTJ, Boulder City, Nevada. For the reasons discussed below, we are allotting Channel 237A at Amboy, California, and dismissing the Cameron counterproposal.

**Comment Summary**

2. KHWY represents that the proposed allotment will provide the first radio service to a “white area” of 3,680 square kilometers, including significant stretches of heavily traveled Interstate 40. KHWY also states that the proposed allotment will provide the second radio service to a “gray area” of 1,239 square kilometers, and will provide the first local transmission service to Amboy, California. REC supports KHWY’s proposal, stating that allotment of an FM channel at Amboy would provide service to a large area currently without service and also would benefit transient listeners traveling through the area.

3. In its counterproposal, Cameron proposes the allotment of Channel 237A at Desert Center, California, as a second local aural service. That proposal is in conflict with KHWY’s proposal to allot Channel 237A at Amboy. Cameron proposes that Channel 231A be allotted at Amboy rather than

<sup>1</sup> *Amboy, California*, 17 FCC Rcd 9557 (MB 2002).

Channel 237A. In order to accommodate the allotment of Channel 231A at Amboy, Cameron proposes the substitution of Channel 230C for Channel 231C at Henderson, Nevada, using the presently licensed coordinates of Station KMBX(FM). Cameron requests that the Commission issue an Order to Show Cause to Station KMBX(FM) in order to enable that proposed channel substitution. In order to remedy the conflict between the substitution of Channel 230C at Henderson and a pending construction permit at Parker, Arizona, Cameron proposes to substitute Channel 252B1 for Channel 230C3 at Parker.<sup>2</sup> In order to eliminate the conflict between the substitution of Channel 230C at Henderson and a pending proposal in MB Docket No. 01-135 to allot Channel 229A at Mojave Valley, Arizona, Cameron proposes to substitute Channel 232A for Channel 229A in that pending proposal. To accommodate that allotment change, Cameron proposes a change of community for Station KFLG(FM), asking that Channel 234C be removed from Kingman, Arizona, and relocated to Pahrump, Nevada.<sup>3</sup> Cameron states that this relocation can be achieved in conformance with the Commission's spacing requirements if additional changes are made at Baker, California, Pahrump, Nevada, and Caliente, California.<sup>4</sup> Cameron requests that an order to show cause be issued to FM Station KHRQ,<sup>5</sup> in order to accomplish the substitution of Channel 276B1 for Channel 235B1 at Baker, and the corresponding modification of the license of FM Station KHRQ(FM).<sup>6</sup> At Pahrump, Cameron requests that Channel 250A be substituted for Channel 236A at reference coordinates specified in Cameron's engineering statement, and that the license of Station KNYE(FM) be modified accordingly.<sup>7</sup> At Caliente, Cameron proposes the substitution of Channel 232C1 for vacant Channel 233C1. Finally, in order to accommodate the substitution of Channel 276B1 at Baker, California, Cameron requests a downgrade of Station KSTJ(FM) at Boulder City, Nevada, from Channel 274C to Channel 274C0.<sup>8</sup>

4. Cameron also proposes a channel substitution and upgrade at Seligman, Arizona. Cameron does not indicate that this allotment change is necessary to accommodate any of the allotment changes proposed to accommodate the allotment of Channel 231A at Amboy, California. Cameron proposes that Channel 234C2 be substituted for Channel 277A at Seligman, Arizona, using a specified reference point for Station KZKE(FM) at Seligman. The licensee of Station KZKE(FM) has consented to the proposed substitution and upgrade.

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<sup>2</sup> On July 15, 2002, the same day that Cameron's counterproposal was filed, Farmworker Educational Radio Network, Inc. ("FERNI"), the licensee (then-permittee) of Channel 230C3 at Parker, filed a petition for rule making proposing the substitution of Channel 252B1 for Channel 230C3 at Parker, Arizona. FERNI consents to this component of Cameron's counterproposal.

<sup>3</sup> Cameron is the licensee of Station KFLG(FM), Channel 234C, Kingman, Arizona. Reallocating Channel 234C at Pahrump, Nevada, would provide 100 percent coverage of the Las Vegas Urbanized Area. In support of the change of community from Kingman to Pahrump, Cameron submits a *Tuck* analysis to demonstrate that Pahrump is independent of Las Vegas. See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

<sup>4</sup> In addition, the relocation of Station KFLG(FM) from Kingman to Pahrump requires the substitution of Channel 230C for Channel 231C at Henderson, Nevada, as described earlier in this paragraph.

<sup>5</sup> Station KHRQ(FM) was formerly Station KKBK(FM).

<sup>6</sup> At the time that Cameron filed its counterproposal, The Drive LLC held a construction permit for Channel 235B1 at Baker, California. In the interim, construction of the facilities was completed, and the channel was licensed with the call sign KHRQ.

<sup>7</sup> The licensee of Station KNYE(FM) has consented to the substitution of Channel 250A for Channel 236A at Pahrump. In order to accommodate that substitution, Cameron proposes to relocate the transmitter site of Station KLUK(FM) at Needles, California. Cameron itself is the licensee of Station KLUK(FM).

<sup>8</sup> KJUL, licensee of Station KSTJ(FM), Boulder City, Nevada, initially consented to this downgrade, then withdrew its consent, and finally reinstated its consent.

5. After the filing of comments and Cameron's counterproposal, and before the deadline for reply comments, KJUL, the licensee of Station KSTJ(FM), Boulder City, Nevada, withdrew its consent to the C0 downgrade and filed a motion seeking dismissal of Cameron's counterproposal. On the deadline for the submission of reply comments, KJUL withdrew its motion to dismiss Cameron's counterproposal and reinstated its consent to the downgrade.

6. Reply comments were filed by KHWY, Marathon, and REC. KHWY points out that the numerous allotment changes contained in Cameron's counterproposal are all tied to Cameron's proposal for an alternative allotment of Channel 231A at Amboy, rather than to Cameron's mutually-exclusive proposal to allot Channel 237A at Desert Center. KHWY notes that the numerous and complex allotment changes required to implement Cameron's counterproposal would unduly delay the introduction of a first local service at Amboy and the corresponding elimination of white and gray areas. Both KHWY and REC object to Cameron's proposal to move Channel 234C from Kingman, Arizona, to Pahrump, Nevada, removing a second local channel from Kingman and giving a third local channel to Pahrump, as well as providing 100 percent coverage to the already well-served Las Vegas Urbanized Area. Marathon filed reply comments arguing that Cameron's counterproposal should be dismissed because it is mutually exclusive with Marathon's previously-filed counterproposal in MB Docket No. 01-135, and therefore, Cameron's counterproposal was defective when filed. Marathon subsequently filed a supplement proposing an alternative allotment for Tecopa, California, in MB Docket No. 01-135 that would not be mutually exclusive with Cameron's counterproposal in this proceeding.

7. Numerous parties have addressed the issue of whether Cameron's counterproposal was acceptable when filed.<sup>9</sup> Infinity, licensee of FM Station KMXB, Henderson, Nevada, argues that Cameron's counterproposal was defective when filed because its proposal to allot Channel 234C at Pahrump, Nevada, was short-spaced to a counterproposal previously filed in MB Docket No. 01-135. In that proceeding, Marathon had counterproposed the allotment of Channel 233C at Tecopa, California. Infinity cites numerous cases wherein we held that "counterproposals are required to be 'technically correct and substantially complete' at the time that they are filed."<sup>10</sup> Infinity states that counterproposals that do not meet the "technically correct and substantially complete" standard have been dismissed.<sup>11</sup> Infinity further emphasizes the importance of technical correctness by citing *Frederiksted, Virgin Islands*, wherein we held that "counterproponents are not permitted to file curative amendments."<sup>12</sup>

8. In response, Cameron agrees with Infinity that allotment counterproposals must be free of defects as of the date they are filed.<sup>13</sup> Cameron contends, however, that the Marathon counterproposal in Docket No. 01-135 was itself defective when filed because it was barred by an already-pending proposal in another proceeding. In Docket No. 01-69, FERNI submitted a counterproposal which requested, *inter alia*, the allotment of Channel 234C0 at Searchlight, Nevada. The Searchlight proposal, which we

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<sup>9</sup> See reply comments of KHWY, REC, and Marathon, "Consolidated (1) Opposition to Motion to Accept Supplement and (2) Motion to Dismiss Counterproposal of Cameron Broadcasting, Inc." (filed by Infinity), and "Opposition to Motion to Dismiss Counterproposal of Cameron Broadcasting, Inc." (filed by Cameron).

<sup>10</sup> *Cloverdale, Alabama*, 12 FCC Rcd 2090, 2093 (MMB 1997) ("Cloverdale"), *app. for rev. denied*, 15 FCC Rcd 11,050 (2000). Infinity also cites *Pinewood, South Carolina*, 5 FCC Rcd 7609 (1990) ("Pinewood"); *Kaukauna, Wisconsin*, 6 FCC Rcd 7142 (MMB 1991) ("Kaukauna"); *Broken Arrow, Kansas*, 3 FCC Rcd 6507 (MMB 1988); and *Taccoa, Georgia*, 16 FCC Rcd 21,191 (MMB 2001) ("Taccoa").

<sup>11</sup> See *Casper, Wyoming*, 15 FCC Rcd 15806 (MMB 2000), and *Carlisle, Kentucky*, 12 FCC Rcd 13181 (MMB 1997).

<sup>12</sup> 12 FCC Rcd 2406 (MMB 1997).

<sup>13</sup> See "Opposition to Motion to Dismiss Counterproposal of Cameron Broadcasting, Inc." at 6.

ultimately dismissed, was pending when Marathon filed a conflicting proposal in Docket No. 01-135, seeking the allotment of Channel 233C at Tecopa, California. For that reason, Cameron therefore argues that Marathon's proposal in Docket No. 01-135 was defective from the outset and should not be held to preclude Cameron's proposal in this proceeding.

### Discussion

9. In allocation proceedings, both counterproposals and initial rulemaking proposals are deemed defective if they are in conflict with, or contingent upon, a cut-off proposal or a non-final decision in another pending proceeding.<sup>14</sup> This policy not only affords protection to parties entitled to cut-off protection, it also is essential to the efficient processing of proposed changes to the Table of Allotments. Processing proposals that are not capable of being effectuated on the date of filing would cause an unnecessary expenditure of Commission resources and would impose an unfair burden on other parties.<sup>15</sup> For that reason, counterproposals, which are subject to comment deadlines, must be correct and complete when filed,<sup>16</sup> and we have rejected curative amendments to counterproposals when the amendments were filed after the comment deadline.<sup>17</sup>

10. Cameron's counterproposal here must be dismissed because it was not correct, complete, and capable of being effectuated on the date of filing, due to conflict with cut-off proposals in another proceeding. Specifically, adoption of Cameron's counterproposal would require modification of two cut-off proposals in MB Docket No. 01-135. Cameron's proposed reallocation of Channel 234C to Pahrump, Nevada, is short-spaced to Marathon's proposal in MB Docket No. 01-135 to substitute Channel 233A for vacant Channel 291A at Tecopa, California. In addition, Cameron's proposed allotment of Channel 232A at Mohave Valley seeks to modify another cut-off proposal in MB Docket No. 01-135, a counterproposal

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<sup>14</sup> See *Pinewood, supra* (petition conflicting with cut-off counterproposal in another proceeding was properly dismissed), *Benjamin, Texas*, 17 FCC Rcd 10994 (MB 2002), and *Mason, Texas*, 17 FCC Rcd 11038 (MB 2002), *recon. denied sub nom Benjamin, Texas, and Mason, Texas*, 18 FCC Rcd 103 (MB 2003), *app. for rev. denied*, 19 FCC Rcd 470 (2004) (citing *Pinewood*), *pet. for rev. pending sub nom Charles Crawford v. FCC*, D.C.Cir., Case No. 04-1031 (filed January 23, 2004); *Auburn, Northport, Tuscaloosa, Camp Hill, Garden, Homewood, Birmingham, Dadeville, Orrville, Goodwater, Pine Level, Jemison, and Thomaston, Alabama*, 17 FCC Rcd 16227 (MB 2002) ("*Auburn*"), and cases cited therein; *Milford, Utah*, MB Docket No. 02-331, DA 04-1651 (rel. June 11, 2004) ("*Milford*") (counterproposal found to be untimely and defective because it proposed to modify cut-off proposals in three earlier proceedings); *Kaukauna, supra* (counterproposal was not acceptable for rule making because it was short-spaced to a cut-off proposal in another proceeding).

<sup>15</sup> *Id.* See *Cut and Shoot, Texas* 11 FCC Rcd 16383, 16384 (MMB 1996) (processing petitions for rule making which are contingent upon action by third parties "is not conducive to the efficient transaction of Commission business and imposes unnecessary burdens on the administrative resources of both the Allocations Branch and the Audio Services Division"). See also *Auburn, supra* (processing contingent proposals is inefficient because "[t]he staff would either have to wait until the contingency is met, thereby further delaying action in a case, or would have to revisit a decision if a proposal was granted contingent on the outcome of an action that never occurred").

<sup>16</sup> See *Lincoln, Osage Beach, Steelville, and Warsaw, Missouri*, 17 FCC Rcd 6119, 6123 (2002) ("counterproposals must be legally correct and substantially complete when filed"), *Auburn, supra*, 17 FCC Rcd at 16229 ("counterproposals must be technically correct and substantially complete at the time that they are filed"), and cases cited therein; *Cloverdale, supra*, 12 FCC Rcd at 2093, and cases cited therein ("[c]ounterproposals are required to be 'technically correct and substantially complete' at the time they are filed").

<sup>17</sup> *Fredericksted, Virgin Islands*, 12 FCC Rcd 2406 (MMB 1997) ("counterproponents are not permitted to file curative amendment"); *Milford, supra* at ¶ 9 ("amendments to counterproposals are impermissible unless an 'unforeseen circumstance' occurred," citing *Taccoa, supra*).

requesting substitution of Channel 229A for vacant Channel 240A at Mohave Valley.<sup>18</sup> Both counterproposals in Docket No. 01-135 were pending and subject to cut-off protection when Cameron filed its counterproposal in this proceeding. Even if the counterproposals in MB Docket No. 01-135 are ultimately dismissed, such action cannot validate Cameron's counterproposal in this proceeding. Under our recent holding in *Auburn, Alabama*, a party must wait until the effective date of an action in a second proceeding that disposes of a contingency before filing a petition or counterproposal. That is, a party may not assume the dismissal of a defective proposal nor the adoption of a rule-compliant allotment. MB Docket No. 01-135 was pending on the counterproposal deadline in this proceeding, and the counterproposals in that proceeding were protected from subsequent conflicting allotment proposals. In these circumstances, Cameron's counterproposal in this proceeding was not capable of being effectuated when filed. For that reason, we shall dismiss Cameron's counterproposal, and we need not reach other issues raised by the counterproposal.<sup>19</sup>

11. Although we are dismissing Cameron's counterproposal, we must, nonetheless, determine whether the public interest warrants the allotment of Channel 237A at Amboy, California. The principal question is whether Amboy qualifies as a community under our allotment policies. No party to this proceeding has questioned the qualification of Amboy as a community deserving of its own local radio station.

12. KHWY states that Amboy is a town with its own post office, zip code, a motel, restaurant, and gas station. KHWY states that Amboy has a year-round population of 20 residents, but that the requested allotment at Amboy also will provide service to motorists traveling Interstate 40, which carries an estimated 22,500 motorists per day through the Mojave Desert en route to Los Angeles. KHWY emphasizes that the proposed allotment would eliminate a large white area by providing the first aural reception service to 3,680 square kilometers, including more than 10 kilometers of Interstate 40 and more than 25 kilometers of historic Route 66. KHWY emphasizes that "assuring the availability of at least one full-time radio service" is the single most important criterion in determining whether to grant a proposed allotment."<sup>20</sup> The allotment also would eliminate a substantial gray area by providing the second aural reception service to 1,239 square kilometers, including several additional kilometers of Interstate 40 and Route 66.

13. We agree with KHWY that Amboy is a geographically identifiable population grouping, deserving of its own local transmission service. As KHWY points out, Amboy's relative isolation ensures that Amboy, founded in 1858, retains its own sense of community.<sup>21</sup> What is more, KHWY argues convincingly that the allotment would serve the public interest by providing a first radio

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<sup>18</sup> That counterproposal was filed in MB Docket No. 01-135 by Marvin Kent Frandsen and M&M Broadcasting, LLC on August 13, 2001.

<sup>19</sup> In addition, we are issuing, in a separate proceeding, a notice of proposing rulemaking to consider FERNI's request to substitute Channel 252B1 for Channel 230C3 at Parker, Arizona. *See n. 2, supra*. FERNI clearly stated in its petition, filed July 15, 2002, that its rulemaking request is independent of the resolution of Cameron's counterproposal in this proceeding.

<sup>20</sup> KHWY cites *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92 (1982), *recon. denied*, 56 RR 2d 448 (1983). The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3).

<sup>21</sup> *See, e.g., Cal-Nev-Ari, Boulder City and Las Vegas, Nevada*, 14 FCC Rcd 17153 (MMB 1999). *See also Pierce, Nebraska, Coosada, Alabama, Pineview, Georgia, and Diamond Lake, Oregon*, 17 FCC Rcd 6676 (MB 2002) (FM channel allotted to Diamond Lake, an unincorporated resort community with no local radio service).

transmission service to a large “white area” and a second transmission service to a significant “gray area.” The introduction of transmission service to these unserved and underserved areas benefits not only the residents of Amboy, but also a substantial “transient population” passing near Amboy.<sup>22</sup>

14. For all of the reasons discussed herein, we find that allotment of Channel 237A at Amboy, California, would serve the public interest. Channel 237A can be allotted at Amboy with a site restriction of 7.4 kilometers (4.6 miles) northeast of Amboy at the following reference coordinates: 34-36-00 North Latitude and 115-40-52 West Longitude. Because Channel 237A at Amboy is located within 320 kilometers (199 miles) of the Mexican border, the Government of Mexico has concurred in this allotment.

15. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission’s Rules, IT IS ORDERED, That effective August 23, 2004, the FM Table of Allotments, Section 73.202(b) of the Commission’s rules, IS AMENDED for the community listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
Amboy, California	237A

16. A filing windows for Channel 237A, Amboy, California, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

17. IT IS FURTHER ORDERED, that the counterproposal of Cameron Broadcasting, Inc., IS DISMISSED.

18. IT IS FURTHER ORDERED That MB Docket No. 02-124 IS TERMINATED.

19. For further information concerning this proceeding, contact Deborah A. Dupont, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief, Audio Division  
Media Bureau

<sup>22</sup> See *Yermo and Mountain Pass, California*, 45 RR 2d 58, 60-61 (BB 1979).